The City of New York

POLICE DEPARTMENT

April 29, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Darryl Bibbins
Tax Registry No. 905786
Detective Bureau Manhattan
Disciplinary Case No. 2014-11344

The above-named member of the Department appeared before the Court on February 26, 2015, charged with the following:

1. Said Detective Darryl Bibbins, assigned to the Detective Borough Manhattan, while off-duty, on or about February 14, 2014, did wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Detective violated a valid Family Court Order of Protection. *(Dismissed before trial by Department motion)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Detective Darryl Bibbins, assigned as indicated in Specification #1, while off-duty, on or about February 14, 2014, did wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Detective engaged in a verbal altercation with Person A. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

3. Said Detective Darryl Bibbins, assigned as indicated in Specification #1, on or about December 26, 2013, having been served with a [redacted] Family Court Order of Protection, did thereafter fail and neglect to report said incident to his Commanding Officer, as required.

P.G. 208-37, Page 4, Additional Data – FAMILY OFFENSES AND DOMESTIC VIOLENCE INVOLVING UNIFORMED OR CIVILIAN MEMBERS OF THE SERVICE

The Department was represented by Beth T. Douglas. Esq., Department Advocate's Office. Respondent was represented by Michael Lacondi, Esq., Karasyk & Moschella LLP.

The first specification was dismissed by the Department before trial. Respondent pleaded Not Guilty to Specification Nos. 2 and 3. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specifications Nos. 2 and 3.

FINDINGS AND ANALYSIS

Introduction

The instant case arose from two people that were going through [redacted], Respondent and Person A. They had two young sons together, and Person A's teenage daughter lived with them as well. Respondent and Person A lived in the same house [redacted] and sometimes even slept in the same bedroom as they were going through the proceedings. Respondent owned the family home.

On December 22, 2013, several members of the family, including Person A, Respondent, and his relatives, went to the New York Jets game at MetLife Stadium in East Rutherford, New Jersey. Their older son was playing in a youth football scrimmage to take place during halftime. There was an altercation between Person A and Respondent's side of the family after the game. According to Person A, it was because [redacted] kept touching the child and she objected. Person A admitted pushing the woman's hand away.

Person A testified that Respondent "went berserk," screaming at her and throwing water on her. He threatened to file a police complaint against her and take the children away. He also angrily followed her out of the stadium.

The next day, Person A went to Family Court [redacted] and filed a family offense petition (DX 1). A temporary order of protection also was issued, expiring on February 20, 2014 (DX 2). This was a limited order of protection, rather than a full one. It did not order Respondent to stay completely away, but instead ordered him to refrain from "from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or circulation, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats or any criminal offense" against Person A. The documents were served on Respondent on December 26, 2013. Person A testified that Respondent was very angry about this and threatened to have his family members get orders of protection against her. In fact, he called his brother and instructed him on what to do.

On February 14, 2014, Person A testified, the Presidents Week vacation was starting. That night, Respondent came home from work as she and the children were packing. She wanted to take the children on a trip to Virginia Beach. She asserted that she had told Respondent about her plans previously and he did not have a problem with it. That night, however, he objected. He stated that there was a custody battle between them and she could not take the children out of state. The next court date was February 20th, the day after they were to return.

According to Person A, Respondent threatened to have her arrested, to report her to the Administration for Children's Services, or to have an Amber Alert sent out if she took them on

the journey. Person A asserted that Respondent was very angry and forbade her to take the children on the trip. He dumped out the contents of the older son's suitcase onto the floor and told Person A that he would slash the tires of her car in order to prevent her from leaving. He also tried to take her car keys. Person A called 911 and Respondent was removed from the home.

Respondent testified that he came home to find that his older son had come home from school sick. He did not want him going on the trip if he was sick. Also, Respondent testified, he and Person A had a Family Court date the next week. Finally, Respondent testified, he was worried that Person A was taking the children out of state, as that would remove them from New York jurisdiction. Worse, he feared that she might take them out of the country – it was indicated that she was a native of Iceland and both she and the children were dual citizens. Respondent denied raising his voice, throwing clothes out of a suitcase or telling Person A that he would slash her tires.

Person A called 911 and Respondent was arrested for criminal contempt and harassment. The [redacted] District Attorney's Office (RCDA), however, declined to prosecute. The assigned assistant district attorney wrote that the charged conduct did not amount to harassment (see RX B, decline to prosecute form). The ADA did not explain why the charged acts did not amount to intimidation or threats. Nevertheless, Respondent was released.

Specification No. 2

In the second specification, Respondent is charged with conduct prejudicial to the good order, efficiency or discipline of the Department by engaging in a verbal altercation with Person A.

Person A testified in a straightforward and unadorned manner. Although Respondent claimed that she was prone to embellishment and exaggeration, there was no sign of this in her testimony. She adamantly denied that Respondent ever was physically violent toward her or that he even threatened violence toward her during the February 14, 2014, incident. And she had many chances to claim the opposite.

For example, Respondent pointed to an incident on February 4, 2014, when Person A called the police because Respondent was following her around with a camera, alleging trying to gather evidence against her. Respondent was not arrested but did go to the local precinct upon instructions from responding officers. Ten days later, for the incident in question at trial, Person A called the police again. Her allegations on February 14, 2014, however, were far from explosive. In a criminal versus non-criminal sense, they were not that different from the ones ten days earlier. Although this time Respondent was arrested, if Person A was seeking to damage him, she fell far short, as he did not even get arraigned.

Respondent pointed to the MetLife Stadium incident as evidence that Person A made up allegations against him. The true facts again showed the opposite. Person A testified and stated in the family offense petition that Respondent "was towering over" her and in her face , "screaming" and spitting at her. He also was holding a water bottle and poured some over Person A's chest. He threatened that, as a police officer, he could have her arrested and could have the children taken away. Person A stated that the children became upset and withdrawn after the incident.

Respondent testified that his sister-in-law simply was fixing the boy's clothes in order to take pictures. Person A then attacked her. Respondent was trying to separate them, but he was holding a water bottle whose cap had been removed. He indicated that MetLife removed the

caps from bottles sold at the stadium so they could not be used as projectiles by unruly fans. In the fracas, some water spilled onto Person A.

Respondent's counsel implied on cross examination of Johanna that she received a "summons" during the incident. That was misleading on its face and Respondent's testimony showed it to be even more misleading. He admitted that he was upset when he was served with the family offense petition. He contacted MetLife Stadium to see about video surveillance to prove his side of the story. Security there indicated that he had to go through East Rutherford law enforcement. But when he contacted those authorities, they said that video only could be released if a complaint was filed. So, Respondent had his brother and sister-in-law file criminal complaints against Person A. These were styled as a "summons" under New Jersey procedure. Person A was not arrested but did have to appear in court. She said that the case against her was dismissed.

In sum, Person A never sought to have anyone arrested as a result of the MetLife incident. This was another incident that she could have exaggerated. She could have sought to have the children listed as petitioners and given orders of protection. Instead, she appeared to be genuinely frightened and honestly sought the court's protection.

Respondent's testimonial demeanor unfortunately damaged his testimony. He admitted following Person A around with a fake camera but then exclaiming, "You've got to be kidding me" when she complained to responding officers on February 4, 2014, about this, as though she should have known it was fake. He daftly and continuously insisted that he knew more about the Patrol Guide than the duty captains that responded to the February incidents. If they had followed the Patrol Guide, he said, he would not have been placed on modified duty. He gave no support for these claims. Even more incredible was his claim that the RCDA told the duty

captain on February 14, 2014, that there was probable cause to arrest Respondent, then changed its mind hours later.

Also troubling was Respondent's indication that during the altercation on February 4, 2014, he kicked Person A's daughter out of her room and told her she would have to sleep in her mother's room for the duration. He also asserted with no apparent basis that Person A was "instructed" to use the Department disciplinary process against him in the marital litigation.

The Court rejects Respondent's claim that it would have made no sense to slash the tires of a vehicle which was registered in his name. That is of no import. What matters is the threat, not whether he would have followed through on it or who legally owned the car. It was an attempt to intimidate Person A into not going on the trip.

In sum, the Court credits Person A's account. Respondent's threat was contrary to the good order, efficiency and discipline of the Department in the context of the verbal altercation between him and Person A. Therefore he is found Guilty of Specification No. 2.

Specification No. 3

The third specification charges Respondent with failing to notify his commanding officer after he was served with the order of protection, as required by Patrol Guide § 206-19 (1) (and not § 208-37, Page 4, Additional Data, as stated in the specification). Respondent conceded that he failed to do so and gave three defenses. First, he indicated that he did not notice the order in the paperwork that was served on him. There were five to seven pages of process and the family court order looked different than the legal-size carbonless forms often used in criminal court.

Second, Respondent asserted that he spoke to his matrimonial lawyer about the issue. His lawyer told him not to worry because the order was not "a stay-away." Meaning, the order

was a limited rather than full order of protection. It did not order Respondent to stay completely away from Person A, but rather just to refrain from assaulting, harassing, etc. her.

Third, Respondent contended that he did not know the Patrol Guide procedure and "had a lot of things going through my mind."

The Court rejects Respondent's proffered explanations. Uniformed members of the service are expected to have a basic familiarity with legal documents. Respondent could have to make an arrest for criminal contempt based on an offender's violation of a family court order of protection. All the more so, then, that he should be charged with knowing the basics of what one looks like. The documents served on Respondent were not lengthy – he testified that it was at most seven pages. The pages were stapled together for ease of reading. Respondent testified that he was upset at Person A's allegation that he "assaulted" her. This demonstrated that he read the documents purposefully.

Moreover, if Respondent's attorney told him that the order was not a stay-away, that did not mean it was not an order of protection. The lawyer supposedly said not to worry but Respondent never testified that he gave him legal advice about not informing the Department. In sum, there was no evidence that the attorney told Respondent it was not an order of protection. Finally, Respondent is responsible for knowing the contents of the Patrol Guide. Ignorance is no more an excuse here than elsewhere.

His defenses rejected, Respondent is found Guilty of Specification No. 3.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to

the Department on February 28, 1994. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department's trial-penalty offer of the four suspension days already served and six additional vacation days is generous in light of the allegations. Cf. *Case No. 2010-1416* (May 3, 2011) (negotiated penalty of 20 vacation days and counseling for verbal altercation with mother of officer's children as he was serving her with papers; he also failed to notify Department of change of address); *Case No. 2007-4215* (Jan. 27, 2010) (10 days for failing to notify of order of protection). The penalty is appropriate in light of the fact that no violence actually occurred, and in view of Respondent's long, dedicated history with the Department. As such, the Court recommends that Respondent forfeit the four suspension days already served and six additional vacation days.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED

JUL 27 2011

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE DARRYL BIBBINS
TAX REGISTRY NO. 905786
DISCIPLINARY CASE NO. 2014-11344

Respondent received an overall rating of 4.0 "Highly Competent" in his last three annual performance evaluations. [redacted] Respondent has received two awards for Excellent Police Duty.

Respondent has no prior disciplinary history. He is currently, however, on modified duty status in regard to the instant charges.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner – Trials